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STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993

NEGOTIATING TEXT

Prepared by the Chairman of the Conference

Introduction

1. The present text has been prepared by the Chairman in response to the request of the Conference. Its purpose is to provide the Conference with a basic negotiating text on the issues under consideration. In the preparation of this text account has been taken of the discussions on the substantive issues and also of the various proposals and position papers submitted by delegations.

2. The Chairman's negotiating text does not prejudice the position of any delegation on the substantive matters referred to therein. It is put forward solely as a negotiating instrument.

3. The Chairman would like to acknowledge, with appreciation, the contributions of the delegations in the preparation of this text, and in particular the invaluable assistance provided to him by a number of experts at the Conference who readily availed themselves whenever necessary to guide him on some of the more technical issues.

I. THE NATURE OF CONSERVATION AND MANAGEMENT MEASURES TO BE ESTABLISHED THROUGH COOPERATION

4. Coastal States and States fishing on the high seas shall cooperate to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks on the high seas. States 1/ shall give effect to the duty to cooperate by establishing conservation and management measures for straddling

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* Reissued for technical reasons.

fish stocks and highly migratory fish stocks and commit themselves to responsible fishing, in a manner consistent with the relevant provisions of the United Nations Convention on the Law of the Sea. They shall:

(a) On the basis of the best scientific evidence available, ensure that conservation and management measures are directed at maintaining or restoring stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(b) Adopt conservation and management measures which may include, inter alia:

(i) Establishment of total allowable catches and quotas;

(ii) Limits to fishing effort (e.g. number of vessels or fishing days);

(iii) Fish size limits or other measures to promote optimum utilization of targeted species;

(iv) Gear restrictions (e.g. minimum mesh sizes);

(v) Area and seasonal closures;

(c) Promote optimum utilization and ensure long-term sustainability of the fish stock(s) concerned;

(d) Take into consideration the effects on ecologically related species with a view to maintaining or restoring populations of associated or dependent species above levels at which their reproduction may become seriously threatened;

(e) Promote the development and use of environmentally safe and cost effective fishing techniques in order to minimize pollution, waste, discards and the catching of untargeted species, in particular endangered species, taking into account the need for protecting biodiversity and the need for multi-species ecosystems-oriented management;

(f) Take into account the special requirements of developing countries in relation to the stock(s) concerned, including:

(i) The vulnerability of developing countries, particularly small island developing countries whose populations are culturally and economically dependent on marine resources, especially in terms of the impact on subsistence fisheries and the nutritional requirements of coastal communities;

(ii) Allowing for favourable access for developing countries located in the region or subregion to participate in high seas fisheries for straddling fish stocks and highly migratory species;

(iii) Assistance to developing countries, including financial, scientific and technological assistance and training, in order that they can fulfil their obligations with respect to conservation and management of straddling fish stocks and highly migratory fish stocks and their interest in development of fisheries for the stock(s);

(g) Enhance the level of certainty in management decision-making by collecting and sharing timely, complete and accurate data, as described in annex 1, from fishing activities, inter alia, on position, catch, by-catch and fishing effort as well as information from national and international research programmes;

(h) Promote scientific research in support of fishery conservation and management, including continuous review of the status of stocks, abundance surveys and biological studies on targeted and non-targeted species, as well as research on oceanographic, climatic and other environmental factors;

(i) Achieve coherent and coordinated conservation and management measures to protect targeted stocks and ecologically related species from over-exploitation by adopting an approach which takes into account the interdependence of stock components on the high seas and in areas under national jurisdiction;

(j) Ensure that conservation measures do not discriminate in form or fact against the fishermen of any State.

5. In order to protect the environment and the living marine resources, the precautionary approach shall be applied widely by States to fisheries management and exploitation, in the following manner:

(a) States shall act so as to obtain and share the best scientific evidence available in support of conservation and management decision-making. States shall take into account, inter alia, uncertainties with respect to the size and productivity of the targeted stock(s), the levels and distributions of fishing mortality, the impact of fishing activities on associated and dependent species and variations in other relevant factors, including climatic, oceanic and environmental changes;

(b) The absence of adequate scientific information shall not be used as a reason for failing to take strict measures to protect the resource;

(c) Use of the precautionary approach shall include all appropriate techniques, including, where necessary, the application of moratoria;

(d) In cases where the status of stocks is of concern, strict conservation and management measures shall be applied and shall be subject to enhanced monitoring in order to review continuously the status of stock(s) and the efficacy of the measures to facilitate revision of such measures in the light of new scientific evidence;

(e) In the case of new or exploratory fisheries, conservative catch and/or effort limits shall be established as soon as possible and shall remain in force

until there are sufficient data to allow assessment of the impact of the fishery on the long-term sustainability of the stock(s) and associated ecosystems.

II. MECHANISMS FOR INTERNATIONAL COOPERATION

6. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks bilaterally and/or multilaterally through regional fisheries management organizations or consultative arrangements, taking into account the specific characteristics of the region or subregion. Consultations shall be initiated at the request of any interested State.

7. As a minimum, the purpose of such cooperation shall be to agree on conservation and management measures with respect to particular fish stock(s) to ensure the long-term sustainability of those stock(s).

8. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the stock(s) concerned may be under threat of over-exploitation. While differences remain, they shall act in good faith to conserve such stocks in a manner which would not constitute an abuse of rights and with due regard to the rights, interests and duties of other States.

9. Where a regional or subregional fisheries management organization or arrangement has the mandate and competence to establish conservation and management measures for particular straddling fish stock(s) or highly migratory fish stock(s), States fishing for the stock(s) on the high seas and coastal States with an interest in the stock(s), shall give effect to their duty to cooperate by participating in the work of the regional organization or arrangement, in accordance with the mandate and terms of participation of that organization or arrangement.

10. Regional and subregional fisheries management organizations and arrangements shall be open to participation, on a non-discriminatory basis, to all States with an interest in the stock(s) concerned.

11. States with an interest in the stock(s) concerned which are not parties to an existing competent regional or subregional fisheries management organization shall be encouraged to participate in the work of that organization.

12. Only those States that participate in the work of a regional fisheries management organization or arrangement, or that otherwise cooperate with the applicable conservation and management measures, should have access to the regulated fishery.

13. New members of a regional fisheries management organization or parties to an arrangement shall generally be entitled to accrue benefits in exchange for the obligations that they undertake. This shall include equitable allocation of participatory rights, taking into account, inter alia:

(a) The status of the stock(s) in question and the existing levels of fishing effort in the fishery;

(b) The prior contribution of the non-party to conservation and management of the stock(s), to the collection and provision of accurate data and to the conduct of scientific research on the stock(s);

(c) The interests of existing participants whose coastal communities are dependent on fishing for the stock(s);

(d) The historical fishing patterns of the non-party;

(e) The special requirements of developing countries from the region or subregion, particularly where they are culturally and/or economically dependent on marine resources.

14. Where no subregional or regional fisheries management organization or arrangement exists to establish conservation and management measures for particular straddling fish stock(s) or highly migratory fish stock(s), States should enter into agreements or arrangements to ensure effective conservation and management of the stock(s) in question.

15. In establishing regional or subregional fisheries management organizations or arrangements for the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, States shall agree, inter alia, on the following:

(a) The fish stock(s) to which the conservation and management measures shall apply, taking into account the biological characteristics of the stock(s) concerned and the nature of the fisheries involved;

(b) The area to be covered, taking into account the relevant characteristics of the region, including socio-economic, geographical and environmental factors;

(c) How the new organization or arrangement will relate to the role, objectives and operations of any existing fisheries organizations or arrangements;

(d) The mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stock(s) in question including, where appropriate, the establishment of a scientific advisory body;

(e) Mechanisms to ensure effective enforcement of conservation and management measures.

16. States shall cooperate to strengthen existing regional and subregional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

17. In implementing the provisions of paragraphs 6 to 16 above, States shall give effect, at the regional level, to the provisions of the United Nations Convention on the Law of the Sea and other international agreements consistent

with the Convention concerning the conservation and management of straddling fish stocks and highly migratory fish stocks.

III. REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS OR ARRANGEMENTS

18. Coastal States and States fishing on the high seas which participate in a regional or subregional fisheries management organization or arrangement shall agree on and comply with conservation and management measures to ensure sustainability of the stock(s) in question. They shall also:

(a) Agree, as appropriate, on allocations of quota or of limits on fishing efforts;

(b) Adopt and apply international minimum standards for the responsible conduct of fishing operations;

(c) Develop agreed standards for collection, reporting, verification and exchange of data and information on fisheries for the stock(s) in question;

(d) Compile and disseminate accurate and complete statistical data, as described in annex 1, relating to catches of targeted stock(s) and non-targeted species (both fish and non-fish) and any other relevant information necessary to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;

(e) Conduct and disseminate the results of scientific analyses of data on the stocks(s) and scientific research on relevant factors, including environmental and oceanographic factors;

(f) Establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;

(g) Develop and use environmentally safe and cost-effective fishing techniques in order to minimize pollution, waste, discards and the catching of untargeted species, in particular endangered species, taking into account the need for protecting biodiversity;

(h) Agree on the means by which the activities of the organization or arrangement will be financed, bearing in mind the relative benefits derived from the fishery and differing capacities of countries, especially the developing coastal States, to provide financial and other contributions;

(i) Agree on measures to deter non-parties from undermining the effectiveness of conservation and management measures established by the organization or arrangement in a manner consistent with international law;

(j) Agree on means by which the fishing interests of new entrants will be accommodated, having regard to the interests of both new entrants and existing participants, their respective contributions to conservation and management of

stock(s), the status of stocks and the special requirements of new entrants from developing countries of the same region or subregion;

(k) Agree on decision-making processes which facilitate timely and effective determination of conservation and management measures;

(l) Provide procedures for compulsory settlement of disputes concerning conservation and management measures, consistent with the relevant provisions of the United Nations Convention on the Law of the Sea. Procedures for settlement of disputes shall be applicable to all members of the organization or parties to the arrangement;

(m) Consult, cooperate and coordinate, as appropriate, with other relevant fisheries organizations and arrangements;

(n) Establish procedures for regular review of the effectiveness of the organization or arrangement.

19. In establishing a regional fisheries management organization or arrangement in respect of an enclosed or semi-enclosed sea, States shall comply with the provisions of article 123 of the United Nations Convention on the Law of the Sea.

20. In giving effect to their duty to cooperate by participating in the work of the regional or subregional fisheries management organization or arrangement, States shall:

(a) Ensure that data collection and processing adequately meet scientific assessment requirements and support management objectives;

(b) Compile and submit the catch, effort and other relevant data referred to in annex 1 within an agreed format and time-frame;

(c) Develop and share new resource assessment methodologies, management models and other analytical techniques;

(d) Cooperate in scientific analyses of data on the stock(s) and in the dissemination of results of assessments and relevant information on the fisheries to interested parties;

(e) Develop the use of environmentally safe and cost-effective fishing gear, technologies and practices in order to minimize pollution, waste, discards and untargeted catches by their vessels and nationals;

(f) Ensure the full cooperation of their relevant national agencies and industries in the agreed work of regional or subregional fisheries management organization or arrangement.

21. Regional fisheries organizations should be transparent. Representatives from other intergovernmental organizations and non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be

afforded the opportunity to participate in meetings of such bodies as observers or otherwise, as appropriate.

IV. DUTIES OF THE FLAG STATE

22. Conservation and management measures for straddling fish stocks and highly migratory fish stocks must be effectively applied. To this end, flag States whose vessels fish on the high seas shall take the necessary measures to ensure that their vessels comply with regional or subregional conservation and management measures. Measures to be taken by the flag State should include:

(a) Cooperation in effective monitoring, control and surveillance of fishing vessels, fishing activities and related activities, either bilaterally or through regional fisheries management organizations or arrangements;

(b) Control of vessels flying its flag on the high seas by means of fishing licences, authorizations, permits and other administrative means of the flag State, in accordance with procedures agreed on a subregional, regional or global level, including:

(i) National legislation to prohibit fishing, on the high seas and in areas under the national jurisdiction of other States, by vessels that are not duly licensed or authorized to fish;

(ii) Requirements that vessels fishing on the high seas must carry the licence, authorization or permit on board the vessel at all times and must produce such licence, authorization or permit on demand for inspection by an authorized observer or inspector;

(iii) Requirements that information contained in a licence, authorization or permit is sufficient to fulfil any subregional, regional or global obligations of the flag State;

(c) Implementation of quotas and other control measures adopted in accordance with subregional or regional arrangements;

(d) Establishment of a national record of fishing vessels incorporating information on vessels entitled to fly its flag and authorized to fish on the high seas;

(e) Compliance with the requirements of regional or global registers of vessels fishing or authorized to fish on the high seas;

(f) Requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems such as the Food and Agriculture Organization of the United Nations (FAO) Standard Specifications for the Marking of Fishing Vessels;

(g) Requirements for catch verification and validation through agreed observer programmes, inspection schemes, unloading reports, supervision of

transshipment, dockside monitoring and monitoring of landed catches and market statistics;

(h) Implementation of national and regionally agreed inspection schemes, including requirements for vessels flying its flag to permit access by inspectors from other States in the region or subregion. Detailed requirements for inspection schemes must include requirements for vessel operators to allow any authorized person(s) to board vessels and carry out the duties agreed under the scheme;

(i) Implementation of national and regionally agreed observer programmes, including requirements for vessels flying its flag to permit access by observers from other States in the region or subregion. Detailed requirements for observer programmes must include requirements for vessel operators to allow observers to board vessels and carry out the functions agreed under the programme;

(j) Installation and use of satellite transmitter equipment (vessel monitoring systems) in accordance with national and regionally integrated systems;

(k) The regulation of transshipment on the high seas to ensure that regionally agreed monitoring, control and surveillance measures are not undermined;

(l) Measures to implement, for vessels flying its flag, subregional, regional or global standards for collection of catch, effort and other relevant fisheries data in the agreed format and time-frame;

(m) Requiring compliance with international minimum standards for responsible fishing practices;

(n) Education and information programmes to ensure that their nationals understand the provisions of, and basis for, the conservation and management measures.

23. The above duties of flag States should be supplemented by regionally agreed systems of monitoring, control and surveillance, including vessel monitoring systems (VMS). Where there is a regionally agreed system of monitoring, control and surveillance in effect, flag States should ensure that the measures they impose are compatible with that system.

V. COMPLIANCE AND ENFORCEMENT OF HIGH SEAS FISHERIES CONSERVATION AND MANAGEMENT MEASURES

A. Compliance and enforcement by flag States

24. States shall ensure compliance by vessels flying their flag with applicable subregionally, regionally or globally agreed management measures, rules and standards. To this end, flag States should:

(a) Adopt legislation and administrative measures to ensure that vessels flying their flags comply with agreed conservation and management measures;

(b) Provide for the effective enforcement of such measures, rules and standards irrespective of whether violations occur;

(c) Ensure that vessels flying their flags are prohibited from fishing on the high seas where they have committed a serious breach of agreed conservation and management measures, or other international rules and standards;

(d) Prevent the flagging or re-flagging of fishing vessels for the purpose of undermining international conservation and management measures, including eliminating any financial incentives;

(e) Investigate immediately any alleged violation of agreed management measures, including the physical inspection of the vessel(s) concerned;

(f) Make every effort to investigate fully and properly the alleged violation and report promptly to the aggrieved State and the relevant subregional, regional or international organization on the progress and outcome of the investigation. Investigations may be undertaken directly, in cooperation with other concerned State(s), or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations should be provided to all interested States;

(g) Require any vessel(s) flying their flags to give information regarding catches, activities and fishing operations in the area of an alleged violation, where there are grounds for believing that the vessel(s) has committed such a violation.

25. A flag State conducting an investigation of an alleged violation may request the assistance of any other State whose cooperation may assist in clarifying the circumstances of the case. All States should endeavour to meet reasonable requests of the flag State in connection with such investigations.

26. If a flag State is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, the flag State should, without delay, institute such proceedings in accordance with its laws and, where appropriate, detain the vessel(s).

27. All States shall take measures for their nationals, including owners, charterers, masters and fishing masters, to ensure that they comply with agreed conservation and management measures and other international rules and standards. Such measures may include cancellation or suspension of authorizations to serve as vessel masters or fishing masters on vessels fishing on the high seas.

28. Sanctions applicable in respect of such violations must be of sufficient gravity as to be effective in securing compliance and to act as a deterrent, and should deprive offenders of the benefits accruing from their illegal activities.

B. Regional arrangements for compliance and enforcement

29. A flag State should cooperate with relevant coastal States and through regional fisheries management organizations or arrangements in the development of regionally agreed procedures for the conduct of fisheries surveillance and law enforcement. Where appropriate, fisheries surveillance should be conducted in accordance with such regionally agreed procedures. Within regions or subregions, States should cooperate in the enforcement of their fisheries laws and regulations including specific agreements for that purpose. To this end, States should agree, inter alia, on procedures under which the appropriate authorities of one State may board, inspect and, if appropriate, arrest a fishing vessel entitled to fly the flag of another State, including the notification requirements for such action and the procedures under which one State might detain the vessel of another State.

30. Within regions or subregions, where registers of fishing vessels have been established, States may take cooperative action to prevent vessels which have violated agreed management measures, rules or standards, from fishing in the region until such time as corrective action is taken by the flag State.

31. When an unregistered fishing vessel is sighted operating in a regulated fishery, the appropriate authorities of a State may take such action as is necessary to arrest and, if warranted, prosecute the vessel. The arresting State shall detain the crew only for the period necessary to bring the arrested vessel to the nearest port of the State and to complete its investigations. It shall expeditiously carry out all investigations and judicial proceedings. It shall, as soon as practicable, inform the State or States of which the crew are nationals of the action taken.

32. When a fishing vessel conceals its identification or indicates a registry to which it does not belong, a State may take such action as is necessary to board, inspect and, if appropriate, arrest the vessel. It shall, as soon as practicable, inform the State or States where the vessel is registered of the action taken. The arresting State may detain the vessel for such reasonable period as is necessary for the flag State to take control of the vessel for enforcement purposes. The arresting State may, with the agreement of the flag State, take other appropriate action.

VI. PORT STATES

33. A port State should take, in accordance with international law, such measures as are necessary to promote the effectiveness of international conservation and management measures. To this end, a port State may inspect documents and catch on board fishing vessels in its ports and offshore terminals and may deny access to these facilities. A port State may also carry out such inspections at the request of another State in order to assist such other State in enforcement of its laws.

34. Where such inspection or other evidence discloses clear and reasonable grounds for believing that the vessel has contravened or otherwise undermined international conservation and management measures or has fished on the high

seas without an authorization, licence or permit, the port State shall inform the flag State and the requesting State, if any. Regional fisheries management organizations or arrangements should provide port States with authority to detain vessels for such reasonable period as is necessary for the flag State to take control of the vessels for enforcement purposes. If the port State detains a vessel for this purpose it must promptly inform the flag State.

VII. NON-PARTIES TO SUBREGIONAL OR REGIONAL ORGANIZATIONS OR ARRANGEMENTS

35. Vessels flying the flag of a State not cooperating with a competent regional fisheries organization or arrangement should not fish contrary to the terms of the conservation and management regime established by that organization or arrangement and a non-party should not issue a licence or permit to its vessels allowing fishing within the regulatory area.

36. Where a State does not participate in the work carried out through subregional or regional fisheries management organization or arrangement, that State is not discharged from the obligation to cooperate in the conservation and management of the regulated stocks.

37. States which are members of or participate in a regional fisheries management organization or arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of non-parties that undermine the effectiveness of conservation and management measures established by the organization or arrangement.

38. States shall cooperate in a manner consistent with international law to the end that fishing vessels entitled to fly the flags of non-parties do not engage in activities that undermine the effectiveness of relevant international conservation and management measures.

VIII. DISPUTE SETTLEMENT

39. All States shall cooperate in order to prevent disputes. To this end, they shall, in particular, agree on efficient and expeditious decision-making procedures in regional fisheries management organizations or arrangements and strengthen existing decision-making procedures as necessary.

40. All States have the obligation to settle their disputes by peaceful means.

41. Where the issue in dispute is of a technical nature, States concerned shall refer the matter to an ad hoc expert(s) panel, which shall confer with the States to resolve the matter without recourse to formal dispute settlement procedures.

42. Where all parties to a dispute are Parties to the United Nations Convention on the Law of the Sea, the procedures for the settlement of disputes under that Convention shall apply.

43. States that are participants in regional or subregional fisheries management organizations or arrangements should strengthen or adapt the procedures for the settlement of disputes established by such organizations or arrangements in order to achieve the timely and effective resolution of fisheries disputes. To this end, they should adopt and comply with procedures for compulsory recourse to binding settlement in the expeditious resolution of disputes relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, including recourse to scientific or other expert advice or to an ad hoc expert(s) panel, as necessary.

44. Where, within a reasonable period of time to be established by the regional organizations, no settlement has been reached by recourse to the procedures referred to above, or the compulsory procedures entailing binding decisions provided under the United Nations Convention on the Law of the Sea, or under other instruments in force between them, an arbitration procedure of the type described in annex 2 shall apply.

45. States that are not participants in a regional or subregional fishery management organization or arrangement may invoke or submit voluntarily to the dispute settlement procedure established by the organization or arrangement. In this event, they shall be bound by the decision taken in the case. States which are participants in such organizations or arrangements may submit to the above-mentioned procedure when it is invoked by non-participants.

46. The application of these procedures shall not prejudice the rights and duties of States specified in the United Nations Convention of the Law of the Sea, particularly the provisions of part XV thereof, concerning the settlement of disputes.

IX. COMPATIBILITY AND COHERENCE BETWEEN NATIONAL AND INTERNATIONAL CONSERVATION MEASURES FOR THE SAME STOCK

47. Coastal States and States fishing on the high seas have a duty to cooperate and achieve compatible, coherent and coordinated measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

48. In developing conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall recognize the interdependence of stock components harvested in areas under national jurisdiction and on the high seas. States regulating fisheries in areas under their national jurisdiction, and subregional or regional organizations or arrangements establishing conservation and management measures for the same stock(s) on the high seas, should achieve compatible and coherent conservation and management measures. Establishment of such measures shall be without prejudice to the sovereign rights of the coastal State(s) for the purpose of exploring, exploiting, managing, and conserving living marine resources within areas under national jurisdiction, exercised in accordance with the United Nations Convention on the Law of the Sea.

49. In determining conservation and management measures for straddling fish stocks and highly migratory fish stocks on the high seas, States, either directly or through subregional or regional organizations or arrangements, shall:

(a) Ensure that the measures do not result in transferring, directly or indirectly, a disproportionate burden of the need for conservation action onto the coastal State(s);

(b) Ensure that the measures do not result in undue harmful impact on the living marine resources within the areas of national jurisdiction;

(c) Ensure that the measures established in respect of the high seas are no less stringent than those established in areas under national jurisdiction in respect of the same stock(s);

(d) Give due regard, to the interests of all States concerned, and to:

(i) The measures taken or proposed by the coastal State(s) within areas under national jurisdiction;

(ii) The relative dependence of the coastal State(s) and States fishing on the high seas on the stock(s) concerned;

(iii) The impact of high seas fishing on the stock(s) and on associated and dependent species within areas under national jurisdiction;

(iv) The particularities of the region and the biological characteristics of the stock(s) concerned.

50. Where agreement is reached on conservation and management measures for the high seas that are more stringent than those applied in areas under national jurisdiction, in respect of the same stock(s), the coastal State(s) concerned shall voluntarily apply conservation and management measures equivalent in effect to the relevant measures applicable on the high seas in areas under their national jurisdiction.

51. If, in spite of the processes outlined above, States are unable to agree on conservation and management measures for the high seas, States shall nevertheless continue their efforts to reach agreement and States fishing on the high seas shall observe, provisionally and voluntarily, conservation and management measures equivalent in effect to those applying in respect of the same stock(s) in areas under national jurisdiction and, in the absence of such measures, observe minimum international standards or otherwise act in a manner consistent with the duties imposed on States under the Convention, until agreement is reached.

X. SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

52. In exercising their rights and fulfilling their responsibilities with regard to straddling fish stocks and highly migratory fish stocks on the high seas, States should give full recognition to the special requirements of developing countries. In this regard, States shall cooperate, at a global, regional, subregional or bilateral level and, as appropriate, through subregional, regional and global organizations, especially FAO, to provide assistance to developing countries.

53. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory species, States shall take into account the special requirements of developing countries, in particular:

(a) The vulnerability of developing countries whose geographical situation makes them dependent upon the exploitation of living marine resources for the nutritional requirements of their populations or parts thereof;

(b) The vulnerability of developing countries, particularly small island developing countries, whose populations are culturally and economically dependent on marine resources, especially in terms of the impact on subsistence fisheries;

(c) The need for specific assistance, including financial, scientific and technological assistance and training, in order that developing countries can fulfil their obligations with respect to conservation and management, of straddling fish stocks and highly migratory fish stocks.

54. Specific forms of cooperation with developing countries for the purposes set out in the present section shall include financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including joint venture arrangements, and appropriate advisory and consultative services. Assistance should be directed in the following areas:

(a) Collection, reporting, verification and exchange of fisheries and fisheries-related data and information;

(b) Stock assessment and scientific research;

(c) Monitoring, control and surveillance, including training and capacity-building at the local level, the development and funding of national and regional observer programmes and access to technology and equipment;

(d) Access to dispute settlement mechanisms within regional and subregional organizations or arrangements;

(e) Greater participation of developing countries in fisheries for straddling fish stocks and highly migratory fish stocks.

55. States shall cooperate to enhance the ability of developing countries to conserve, manage and develop their own national fisheries for straddling fish

stocks and highly migratory fish stocks in the exclusive economic zone and on the high seas. Such cooperation shall take the form of special assistance to developing countries, including allowing for favourable access for developing countries to high seas areas adjacent to their exclusive economic zones located in a particular subregion or region to enable them to participate in high seas fisheries for straddling fish stocks and highly migratory fish stocks.

56. States shall cooperate to establish a voluntary fund to enable developing countries to meet the costs involved in any dispute settlement proceedings to which they may be parties.

57. States and international organizations should assist developing countries in establishing new fisheries organizations or strengthening existing organizations concerned with the conservation and management of straddling fish stocks and highly migratory fish stocks.

XI. REVIEW OF THE IMPLEMENTATION OF CONSERVATION AND MANAGEMENT MEASURES

58. States, subregional and regional organizations and arrangements concerned with the conservation and management of straddling fish stocks and highly migratory fish stocks shall implement the foregoing based on their capacities and the needs of the region. They should report biennially to the Secretary-General of the United Nations who should submit a report to the General Assembly on a regular basis, taking into account information provided by FAO on the progress made in the implementation of the contents of this document, with a full review by a conference to be held in five years. The conference shall review and assess the adequacy of the provisions of this document and, if necessary, propose means of strengthening the substance and methods of implementation of the provisions and measures of this document in order to address any continuing problems in fisheries for these stocks.

Notes

1/ For the purposes of these provisions, references to States should be interpreted as including the European Economic Community in matters within its competence. These provisions also apply to the fishing entities whose vessels fish on the high seas.

Annex 1

MINIMUM DATA REQUIREMENTS FOR THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

1. The timely collection, compilation, analysis and evaluation of data are fundamental for effective fishery conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as data relating to vessel identity, performance, etc. Data collected in support of conservation and management of target stocks must also include information on associated and dependent species, whether they are fish or non-fish species. Data collected must be verified to ensure accuracy, while maintaining the confidentiality of non-aggregated data to ensure cooperation by industry.

2. Consideration should be given to enhancing training and providing financial and technical assistance to developing countries with regard to building capacity in the field of conservation and management of living marine resources. The fullest possible involvement of developing country scientists and managers in fisheries conservation and management should be promoted. Assistance should focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments.

Fishery data collection

3. The following general principles should be considered in defining the parameters for collection, compilation, and exchange of data from high seas fishing operations:

(a) A State is obliged to collect adequate data from vessels flying its flag;

(b) Data should be collected on fishing operations in sufficient detail and in accordance with the nature of the fishery (e.g. individual trawl tow, long-line set, school fished for pole-and-line and purse-seine, day fished for troll) so as to maintain flexibility in the analysis of these data;

(c) Flag States must compile fishery catch and effort data in an internationally agreed format and provide them in a timely manner to the relevant regional fisheries organization or arrangement;

(d) Scientists of the flag State and from the relevant regional fisheries organization or arrangement should analyse these data separately or jointly, as appropriate;

(e) Data collected from each fishery must be disseminated in a timely manner and in an agreed format to the participants in the organization or arrangement.

Basic fishery data requirements

4. As a minimum, the following types of data should be collected concerning all straddling fish stocks and highly migratory fish stocks in sufficient detail to facilitate effective stock assessment:

(a) Time series of historical catch and effort statistics by fleet from the start of the fishery;

(b) Total catch in number and/or nominal weight [defined by FAO as: (landings + losses due to dressing, handling and processing - gains prior to landings) conversion factors] by species of targeted and non-targeted species, including non-fish species, as is appropriate to each fishery;

(c) Discard statistics, including estimates where necessary, reported as number and/or nominal weight by species;

(d) Effort statistics appropriate to each fishing method;

(e) Fishing location, date and time fished, and other statistics on fishing methods as appropriate.

Scientific data supporting stock assessment

5. In addition to collection, compilation and exchange of fishery data, States are obliged to exchange scientific data. These data should include:

(a) Length, weight and sex composition of the catch, where agreed;

(b) Biological parameters supporting stock assessments and other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological data.

Such data should be exchanged through regional fisheries organizations or arrangements.

Vessel data and information

6. The following vessel-related data is required for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

(a) Vessel identification, flag and port of registry;

(b) Vessel type;

(c) Vessel specifications (e.g. material of construction, date built, registered length, gross registered tonnage, power of main engine(s), hold capacity, catch storage methods);

(d) Fishing gear description (e.g. type, amount and gear specifications).

7. The following information need not be provided if available through other means:

(a) Navigation and position fixing aids;

(b) Communication equipment;

(c) Crew size, etc.

Data reporting

8. The following data on high seas fishing operations should be sent at frequent intervals to the appropriate national fisheries administrations of coastal States and distant-water fishing nations according to the flag of the fishing vessel:

(a) Catch and effort log books, including data on fishing operations;

(b) Catch and effort reports by radio, telex, facsimile and/or satellite transmission;

(c) Exclusive economic zone entry and exit reports.

Data verification

9. The following types of fishery information and mechanisms for verifying fishery data should be established for high seas fishing operations:

(a) Position verification by satellite transmission equipment;

(b) Scientific observer programmes to verify catch, effort, catch composition and other details of fishing operations;

(c) Vessel trip, landings and transshipment reports to verify catches;

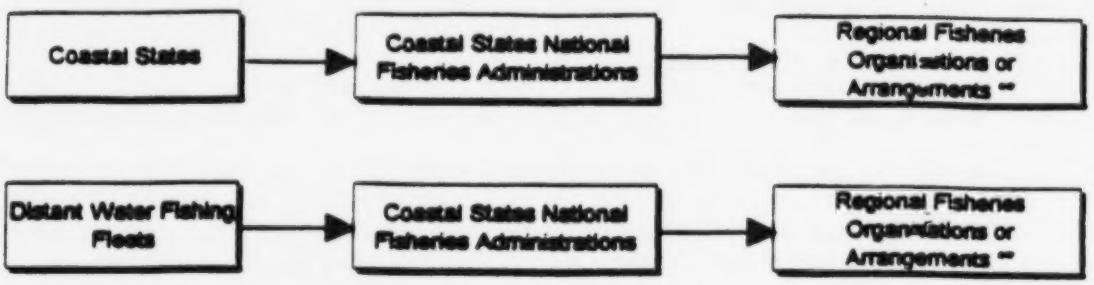
(d) Port sampling to verify catch composition and amount.

Data exchange

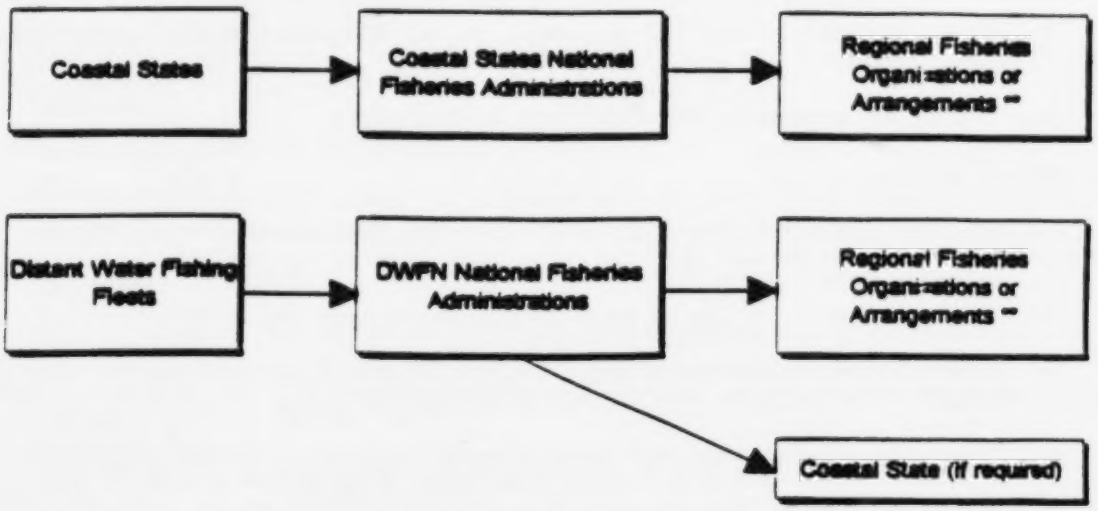
10. Proper conservation and management of straddling fish stocks and highly migratory fish stocks require the availability of relevant fisheries data from the entire stock. Data collected by flag States must therefore be shared through appropriate regional fisheries organizations or arrangements. The regional fishery organization or arrangement shall endeavour to compile data from the stocks as a whole and make data available to all interested parties.

11. The following models of data exchange outline mechanisms currently in effect:

Data Flow Arrangements within Coastal State EEZs


Coastal States
Coastal States National Fisheries Administrations
Regional Fisheries Organizations or Arrangements **
Distant Water Fishing Fleets
Coastal States National Fisheries Administrations
Regional Fisheries Organizations or Arrangements **

Data Flow Arrangements for High Seas Fishing Operations


Coastal States
Coastal States National Fisheries Administrations
Regional Fisheries Organizations or Arrangements **
Distant Water Fishing Fleets
DWFN National Fisheries Administrations
Regional Fisheries Organizations or Arrangements **
Coastal State (if required)

** After compilation, the regional fisheries organization disseminates data to all relevant parties.

At the global level, collection and dissemination of global data should be effected through the Food and Agriculture Organization of the United Nations (FAO). Where a regional organization or arrangement does not exist, FAO may also do the same at a regional level by arrangement with the States concerned.

Annex 2

ARBITRATION

Institution of proceedings

1. Any party to a dispute may submit the dispute to arbitration by written notification addressed to the Secretary-General of the United Nations, who shall notify the other party or parties to the dispute and constitute an arbitral tribunal as set out herein. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

Constitution of arbitral tribunal

2. The arbitral tribunal shall, unless the parties to the dispute agree otherwise, be constituted as follows:

(a) The arbitral tribunal shall consist of three members, subject to subparagraph (f) below;

(b) The party instituting the procedures shall adopt one member, who may be its national. The appointment shall be included in the notification referred to in paragraph 1 above;

(c) The other party to the dispute shall, within 10 days of receipt of the notification, appoint one member, who may be its national. If the appointment is not made within this period, the appointment shall be made by the Secretary-General within a further 10 days;

(d) The two members thus appointed shall select, by mutual agreement, the third member, who shall be the chairman. Failing agreement, the Secretary-General shall make the appointment in 10 days. The chairman shall be a national of a third State;

(e) Any vacancy shall be filled in the manner described for the initial appointment;

(f) Parties to the dispute with the same interest shall appoint one member of the tribunal jointly and by agreement. Where there are several parties to the dispute having separate interests, or where there is disagreement on whether they have the same interest, the Secretary-General shall appoint one member of the tribunal after consultation with the parties.

Submission of memoranda

3. Within 10 days of the formation of the tribunal, the parties concerned shall file a memorandum with the tribunal, copies of which shall be transmitted to all parties.

Hearings

4. A hearing shall be convened at a place and on a date to be determined by the tribunal within 30 days following the formation of the tribunal.

Procedure

5. Unless the parties to the dispute agree otherwise, the arbitral tribunal shall determine its own procedures, assuring to each party full opportunity to be heard and to present its case.

Duties of parties to a dispute

6. The parties to the dispute shall facilitate the work of the arbitral tribunal.

Expenses

7. Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

Required majority for decision

8. Any decision of the arbitral tribunal shall be taken by a majority of its members.

Default of appearance

9. If one of the parties to a dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself, not only that it has jurisdiction over the dispute, but also that the claim is well founded in fact and in law.

Provisional measures

10. The tribunal may prescribe provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties or to prevent damage to the stock(s) in question, pending the final decision.

Award

11. The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. The tribunal shall communicate its decision to all parties within 30 days of the end of the hearing. Reasons in writing shall be communicated to the parties within 60 days of the decision.

Finality of award

12. The award shall be final and without appeal. It shall be complied with by the parties to the dispute.

Interpretation or implementation of the dispute

13. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award.

Application to entities

14. The provisions of the present annex shall apply, mutatis mutandis, to any dispute involving any entities to the dispute.